

**REMARKS**

The art rejections are respectfully traversed. Considering first the rejection of claims 1, 2, 7, 11, 13, 14, 19, 20, 21, 27, and 28 under 35 USC §102 as being anticipated by US Published Patent Application 2003/0053414 to Akahane et al. (hereinafter "Akahane"), as argued in Amendment D, incorporated herein by reference, independent claims 1, 13, 20 and 27 all require, in part, "data transmission works in a predetermined communication protocol." On pages 18-19 of the Office Action, the Examiner asserts that FIG. 1 of Akahane discloses an, "MPLS network which operates on an OSI Model layer that is generally considered to lie between traditional definitions of Layer 2 and Layer 3, and thus is often referred to as a "Layer 2.5" protocol which can be a predetermined protocol."

Moreover, even if encapsulation is employed, the label of a received packet is used for forwarding and therefore it cannot be said that Akahane teaches the limitation of "without controlling the control information according to the predetermined communication protocol."

Akahane does not teach of any predetermined protocols, but only of a protocol involving an encapsulation header and a determination from information contained in the header. Additionally, the fact that a protocol is based on an OSI Model of layered protocols is insufficient in supporting the rejection that Akahane discloses all of the requirements of the claims. As the MPEP §2131 dictates, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "Generally considered," "often referred to," and "can be" do not amount to expressly or inherently describing. The Examiner's support for the rejection, i.e., that Akahane teaches an MPLS System, which is generally based on an OSI Model, which may

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contain a predetermined protocol, is speculative and is not supported by the disclosure of Akahane for the §102(e) rejection. Therefore, because Akahane fails to teach at least this requirement of claims 1, 13, 20 and 27, the Examiner's rejection is in error. Accordingly, withdrawal of the rejection is respectfully requested.

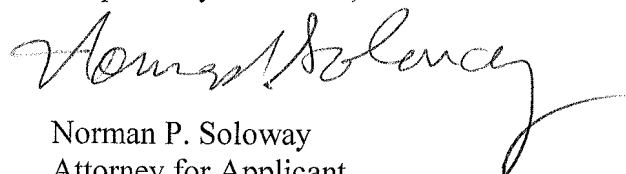
Turning to the rejection of claims 3-6, 8-10, 12, 15-18, 22-26, 28 and 29 as obvious from Akahane in view of US Published Patent Application 2002/0085590 to Booth, these claims are directly or indirectly dependent on independent claims 1, 13, 20 or 27, as the case may be. Booth does not teach a simple transfer of unaltered control information from the Data Communications Channel (DCC), but instead teaches inserting user data into the DCC which alters the control information. (Booth Abstract; [0006]). Therefore, because of the deficiencies of Akahane and because Booth fails to supply these deficiencies, no combination of Akahane and Booth could be said to achieve or render obvious independent claims 1, 13, 20 and 27 or claims 3-6, 8-10, 12, 15-18, 22-26, 28 and 29 which depend thereon.

Having dealt with all the objections raised by the Examiner, the Application is believed to be in order for allowance. Early and favorable action is respectfully requested.

The foregoing Amendment makes no claim changes and should be entered as a matter of right.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,



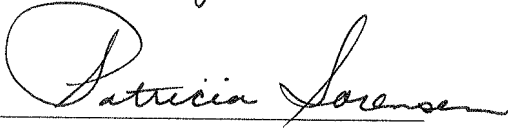
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